

DISCIPLINE APPEAL HEARING
OF KEVIN WADDELL
BEFORE THE CITY OF SAN LUIS OBISPO CITY COUNCIL
FINDINGS OF FACT, DECISION and FINAL ORDER

This matter arises out of a challenge to a disciplinary action resulting in the termination of employment of former city employee/police officer Kevin Waddell ("Waddell"). The issue before the City Council is whether to uphold the disciplinary action recommended and implemented by the City of San Luis Obispo ("City") or alternatively, based on the administrative record of the proceedings, make other findings of facts and take other action.

While employed as a City of San Luis Obispo police officer, Kevin Waddell ("Waddell"), was charged with four counts of misconduct as set forth in the Notice of Decision of Disciplinary Action. A copy of the Notice is attached hereto and incorporated by reference as Exhibit A. The Notice recommended termination of employment.

Waddell timely appealed his termination pursuant to Personnel Rules and Regulations Section 2.36.350 (City of San Luis Obispo Municipal Code). The parties (City and Waddell) selected Professor Christopher David Ruiz Cameron from Southwestern School of Law as the independent Hearing Officer to make Findings and Recommendations to the City Council.

The Appeal Hearing consisted of 10 days of proceedings from June - October 2015 including the following dates: June 25 and 26, 2015; July 9, 23, and 24, 2015; August 20 and 21, 2015; September 2, 2015; and, October 2 and 6, 2015. Waddell was represented by attorney Kasey A. Castillo of Castillo Harper APC and attorney Nicole Naleway was in attendance. The City was represented by attorney Gregory A. Palmer of Jones & Mayer and City Attorney Christine Dietrick was in attendance. The parties were provided an opportunity to present evidence through sworn testimony of witnesses who were subject to cross-examination and

through exhibits. Following the conclusion of the hearings, both parties submitted Post-Hearing Briefs on December 21, 2015.

The Report and Recommendation of the Hearing Officer dated January 4, 2016 denied Waddell's appeal. Based on the entirety of the proceedings, the Hearing Officer made the Recommendations attached hereto and incorporated as Exhibit B (pages 73-75 of the Report and Recommendation). Based on the entirety of the proceedings, the Hearing Officer made the Conclusions of Law attached hereto and incorporated by reference as Exhibit C (pages 76-77 of the Report and Recommendation). The Hearing Officer concluded that Waddell violated the following City Personnel Rules Standard of Conduct Sections:

1. Section IV-I "A Department employee shall not knowingly or willfully make a false verbal statement or give false information to a Department supervisor or investigator."
2. Section III-B "Employees of the Department shall be punctual in reporting for duty at the time and place designated by their supervising officer."
3. Section IV-LL "Department employees shall not conduct themselves in a manner that reflects adversely on the Department, or which discredits the Department, or is detrimental to the reputation or professional image of the Department."

The Hearing Officer further concluded that Waddell did not violate California Vehicle Code Section 10852 - willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. The Hearing Officer concluded that the charges against Waddell in Counts 1, 2, and 3 of the Notice of Discipline were substantiated by just and proper cause and that the charges in Count 4 was not substantiated or sustained. The Hearing Officer concluded that termination was the appropriate disciplinary action due to the severity of the offenses.

The Hearing Officer's Report and Recommendation was forwarded to the City Council in accordance with Personnel Rule and Regulation Section 2.36.350F. The City Council has final authority over this administrative matter (Personnel Rules and Regulation Section 2.36.350G).

Based on the entire administrative record, the City Council may affirm, reverse, or modify the City's decision to terminate the employment of Kevin Waddell.

The City Council members had the opportunity and reviewed the record of the administrative proceedings. The City Council met in Closed Session on July 14, 2016 and July 19, 2016 to review the Hearing Officer's report, findings, recommendations and conclusions and the record of the hearing. A Special Meeting of the City Council was timely noticed. City provided notice to Kasey Castillo, the attorney who represents Waddell, prior to the Special Council Meeting. Ms. Castillo and her client, Kevin Waddell, appeared before the City Council during the public comment period. Ms. Castillo submitted the Appellant's Written Exceptions to the Hearing Decision (CSMS Case No. ARB-14-029) on July 14, 2016 and made oral comments to the City Council. City Council then meet in Closed Session to consider this matter.

The CITY COUNCIL of the City of San Luis Obispo considered the written and oral evidence of the administrative hearings, all briefs submitted by counsel for the parties and the Hearing Officer Report and Recommendations and hereby adopts the following findings of fact in support of a decision to uphold the termination of employment of Kevin Waddell:

1. Adopts the Recommendation as to Finding of Fact by Hearing Officer (Exhibit B) in its entirety.

Decision and Final Order.

The effectiveness of the San Luis Obispo Police Department depends on community respect and confidence. The trust earned by the Police Department allows its employees to operate efficiently. It is vitally important that all employees conduct themselves in a manner demonstrating unquestionable integrity, reliability, and honesty consistent with public expectations. The success of the Police Department rests with reliability and credibility of its police officers – whether interacting with citizens, making arrests, testifying in court or in any legal proceeding, or providing information in any official setting. The Department's Code of

Ethics states: "I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service."

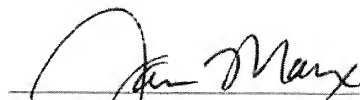
The City Council carefully weighed and considered the evidence, the findings, and its options in this matter. The decision to terminate a police officer is not an easy decision and, the City Council understands the impacts of such a decision. On balance, police officers are critically important to the community and, the community expects them to be trustworthy and ethical.

Based on the Findings of Fact set forth above, the CITY COUNCIL of the City of San Luis Obispo accepts and adopts the Hearing Officer Conclusions of Law (Exhibit C) in its entirety and upholds the termination of Kevin Waddell.

Pursuant to California Code of Civil Procedure Section 1094.6, this Decision is final upon the date it is mailed by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing to the party seeking a writ. Please also note that pursuant to Section 1094.6, subdivision (b): "Subdivision (a) of Section 1013 does not apply to extend the time following deposit in the mail of the decision of the findings, within which a petition shall be filed." For further details regarding procedures to be followed, please refer to the California Code of Civil Procedure including, but not limited to, Sections 1094.5 and 1094.6

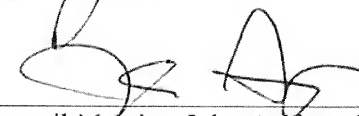
The foregoing Decision and Final Order is adopted by a vote of 4-1 with Jan Marx, Dan Carpenter, Carlyn Christianson, and Dan Rivoire voting in favor thereof and John Ashbaugh voting against.

Dated: 7/19/16



Mayor Jan Marx

Dated: 7/19/16



Council Member John Ashbaugh.

Dated: 7/19/16

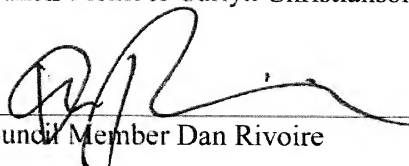


Council Member Dan Carpenter

Dated: 7/19/2016

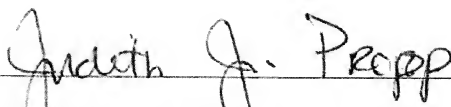

Council Member Carlyn Christianson

Dated: 7/19/2016


Council Member Dan Rivoire

Approved as to form:

Date: 7/19/2016


Judith J. Propp, Of Counsel
Renne Sloan Holtzman Sakai LLP
Special Counsel to City Council of San Luis Obispo



Memorandum

city of san luis obispo
Police Department
1042 Walnut
SLO, CA 93401
(805) 781-7317

"Service, Pride, Integrity"

Date: October 1, 2014
To: Officer Kevin Waddell
From: Stephen Gesell, Chief of Police
Subject: Notice of Decision of Disciplinary Action

Reference: AI-13-004P and 13-005P

After careful consideration of the information presented during your Skelly meeting held on September 11, 2104 in response to the Notice of Intent to Administer Disciplinary Action dated July 7, 2014, you are hereby notified pursuant to Personnel Rules and Regulations, Section 2.36.320, I am imposing the following disciplinary action against you effective October 2nd, 2014:

Termination as a Police Officer with the City of San Luis Obispo

This action is being taken for the following violations of City and Police Department Rules and regulations associated with your conduct on October 19th 2013 and February 22nd 2013 and actions that would constitute a violation of California Vehicle Code section 10852 Vehicle Tampering. As a basis for the imposition of the proposed discipline, I have thoroughly reviewed the complete Administrative Inquiry records referenced above and included here and I expressly affirm and adopt the conclusions and recommendations therein and find that the allegations of the following violations are SUSTAINED:

Violation of San Luis Obispo Rules and Regulations Standard of Conduct section IV. I "A Department employee shall not knowingly or willfully make a false verbal statement or give false information to a Department supervisor or investigator."

Violation of San Luis Obispo Rules and Regulations Standard of Conduct section III. "Employees of the Department shall be punctual in reporting for duty at the time and place designated by their supervising officer."

Violation of San Luis Obispo Rules and regulations Standard of Conduct section IV-I-which states in part Department employees shall not conduct themselves in a manner that reflects adversely on the Department, or which discredits the Department, or is detrimental or damaging to the reputation or professional image of the Department.

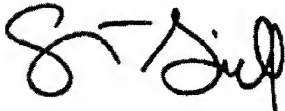
Violation of California Vehicle Code Section 10852. No person shall either individually or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner

Pursuant to Municipal Code Section 2.36.320, the City Manager has affirmed the imposition of this discipline.

During your Skelly hearing on September 11th 2014 you chose not to refute the findings of the Administrative Inquiry. You were represented by legal counsel who did not deny on your behalf that you engaged in the alleged conduct. However your legal counsel argued that the weight of your professional duties and circumstances of your personal life should be considered as mitigating circumstances in determining the appropriate level of discipline. After significant consideration regarding those facts and circumstances, I find that you engaged in the conduct alleged, demonstrated a continuing pattern of dishonesty and lack of accountability for misconduct during internal investigations of your alleged conduct, and that termination is the appropriate discipline for the conduct.

Pursuant to Municipal Code Section 2.36.340B, Disciplinary action – Right of Appeal, you have the right to appeal this decision to a hearing officer. You must file the appeal in writing with the Director of Human Resources, Monica Irons, at 990 Palm Street, San Luis Obispo, CA 93401 within fifteen business days following the effective date of this notice, by close of business October 23, 2014.

Warning against retaliation: This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has provided information pursuant to the investigation referenced in this Notice. You may not make any adverse comments to, or in any other manner retaliate against, any individual who has provided information to the City of San Luis Obispo regarding your conduct.



Stephen Gesell
Chief of Police
City of San Luis Obispo

RECOMMENDATION

Wherefore, in light of the foregoing Report, I hereby make the following Recommendation as to Finding of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Department provided Appellant with notice of the proposed action against him, the reasons therefor, a copy of the charges and materials upon which the action was based, and the right to respond, either orally or in writing, to the authority initially imposing discipline. By memorandum dated September 9, 2014, Appellant was served with a Notice of Intent to Administer Disciplinary Action that stated the charges, provided voluminous supporting documentation, and notified him of his right to respond. The supporting documentation included nine (9) sets of materials, including the recordings of all investigative interviews conducted by the Department. On September 11, 2014, Appellant attended a meeting with Chief Stephen Gesell at which Appellant was represented by Nicole Quintana Winter, Esq. Ms. Winter was Appellant's counsel of record at the time. An opportunity to respond to the charges at this meeting was afforded and Ms. Winter did so. By memorandum dated October 1, 2014, the Department rejected Appellant's arguments, sustained the charges, and imposed a penalty of termination.

2. Appellant falsely represented that he had talked with Lt. Smith, the CAT shift supervisor, and obtained his permission to report for duty up to 30 minutes late on October 19, 2013.

3. Appellant failed to be punctual when he reported for duty about 30 minutes late on October 19, 2013.

4. Appellant conducted himself in a manner than reflected adversely on the Department, or which discredited the Department, or was detrimental to the reputation or professional image of the Department, when he falsely represented that he had the permission of Lt. Smith, the CAT shift supervisor, to report for duty up to 30 minutes late on October 19, 2013.

5. Appellant engaged in the foregoing misconduct when he stated to Sgt. Pfarr by text message that he had been authorized by Lt. Smith on October 18 to report up to 30 minutes late for CAT shift duty on October 19. But Appellant's statement was untrue. As to October 18, Appellant never asked Lt. Smith for permission to report for work late, and Lt. Smith never granted such permission, on that date. Appellant repeated this false statement at least twice: in both a follow-up or report-for-duty meeting with Sgt. Pfarr on October 19, and in a subsequent IA interview with Lt. Bledsoe on December 12, 2013. So Appellant did not have permission when he reported for duty about 30 minutes late on October 19, 2013.

6. Appellant also conducted himself in a manner than reflected adversely on the Department, or which discredited the Department, or was detrimental to the reputation or professional image of the Department, when he removed – without the owner's permission, and without cause related to his work – a hub cap from a Bentley automobile that had been involved in a serious injury traffic accident on February 22, 2013.

7. Appellant engaged in the foregoing misconduct on February 22, 2013, when he a borrowed screwdriver to “pop off” one of the hub caps on which the automobile's “B” emblem was imprinted. Later, he put the hub cap back inside the vehicle at the direction of Sgt. Pfarr. The hub cap was neither evidence nor part of the Department's investigation of the accident, and Appellant had no cause or permission to remove it.

8. But the foregoing misconduct did not constitute wilfully tampering with or removing part of a vehicle without the consent of the owner.

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CONCLUSIONS OF LAW

1. Appellant was timely afforded his procedural due process rights required by state law (*Skelly v. State Personnel Board*, 15 Cal. 3d 194 (1975)).

2. As to Count No. 1, Appellant violated Personnel Rules Standard of Conduct Section IV-I: "A Department employee shall not knowingly or wilfully make a false verbal statement or give false information to a Department supervisor or investigator."

3. As to Count No. 2, Appellant violated Personnel Rules Duty Section III-B: "Employees of the Department shall be punctual in reporting for duty at the time and place designated by their supervising officer."

4. As to Count No. 3, Appellant violated Personnel Rules Standard of Conduct Section IV-LL: "Department employees shall not conduct themselves in a manner than reflects adversely on the Department, or which discredits the Department, or is detrimental to the reputation or professional image of the Department."

5. As to Count No. 4, Appellant did not violate California Vehicle Code Section 10852: "No person shall either individually or in association with one or more persons, wilfully injure or tamper with any vehicle on the contents thereof or break or remove any part of a vehicle without the consent of the owner."

6. Therefore, the charges against Officer Kevin Waddell in Counts No. 1, 2, and 3 are substantiated by just and proper cause.


7. But the charge against him in Count No. 4 is not substantiated by just and proper cause.

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8. Termination was the appropriate disciplinary action due to the severity of the offenses stated in Counts No. 1, 2, and 3. Dishonesty is an especially serious offense for a sworn police officer, whose true word is relied upon in almost everything he says and does.

9. Accordingly, the Appeal should be denied.

A handwritten signature in black ink, appearing to read 'Chris Cameron', with a long horizontal line extending to the right.

Christopher David Ruiz Cameron
Hearing Officer

Los Angeles, California
January 4, 2016

ArbsMisc/SLO Waddell Report Recommendation by Cameron FINAL

PROOF OF SERVICE

STATE OF CALIFORNIA; COUNTY OF SAN LUIS OBISPO

I am employed in the County of San Luis Obispo, State of California. I am over the age of 18, and not a party to the within action. My business address is 990 Palm Street, San Luis Obispo, California 93401.

On July 21, 2016, I caused the foregoing document described as Decision and Final Order to be served on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, addressed as follows:

Kasey A. Castillo
3333 Concourses Street
Bldg. 4 Ste. 4100
Ontario, CA 91764

Kevin Waddell
175 Walnut Street
Arroyo Grande, CA 93420

- ☒ **By United States Mail:** I enclosed the documents in a sealed envelope addressed as indicated above. I am readily familiar with the office's practice of collection and processing documents for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- ☐ **By Personal Delivery:** I personally delivered a true copy in a sealed envelope addressed as indicated above.
- ☐ **By E-mail:** I caused this document to be transmitted via e-mail to the e-mail address listed above.
- ☐ **By Overnight Delivery:** I enclosed the documents in an envelope provided by an overnight delivery carrier and addressed as indicated above. I placed the envelope for collection and overnight delivery at an office of the overnight delivery carrier.
- ☐ **By Facsimile Transmission:** I personally sent a true copy to the parties authorized to accept service as set forth above at the fax numbers indicated above. The transmission was reported as complete and without error, and a transmission verification report was properly issued by the transmitting facsimile machine, stating the time and date of such transmission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 21, 2016, at San Luis Obispo, California.



PROOF OF SERVICE

